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13/38

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FI, FI (utility model), GB, GD, GE, GH, GM, HR, HU, ID,
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LU, LV, MD, MG, MK, MN, MW, MX, NO, NZ, PL, PT,
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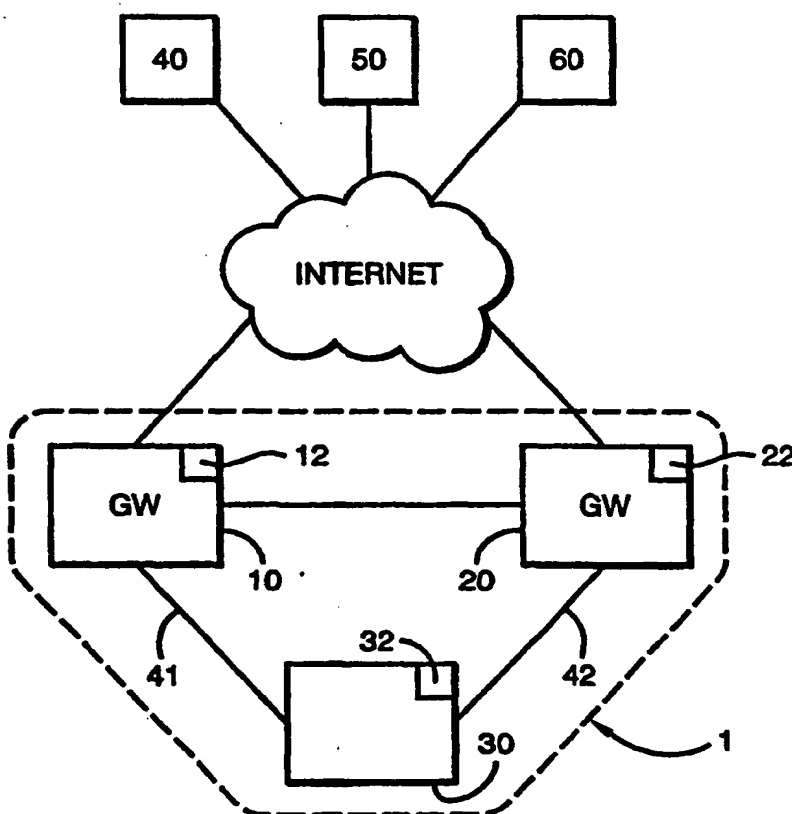
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(84) Designated States (*regional*): ARIPO patent (GH, GM,
KE, LS, MW, SD, SL, SZ, TZ, UG, ZW), Eurasian patent

[Continued on next page]

(54) Title: LOAD BALANCING VIA MESSAGE SOURCE SELECTION



(57) Abstract: Methods and devices for transferring large e-mail messages are described herein. More specifically, one such method comprises providing a mail network comprising an initiator (30) and at least two gateways (10 and 20), the initiator identifying a mail message recipient and identifying advertising material to be mailed to the recipient (40), selecting a gateway from the at least two gateways, and requesting the selected gateway to generate an e-mail message to the recipient; and the selected gateway generating and sending the requested message.

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(AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European patent (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE), OAPI patent (BF, BJ, CF, CG, CI, CM, GA, GN, GW, ML, MR, NE, SN, TD, TG).

For two-letter codes and other abbreviations, refer to the "Guidance Notes on Codes and Abbreviations" appearing at the beginning of each regular issue of the PCT Gazette.

Published:

- *With international search report.*
- *With amended claims.*

INTERNATIONAL SEARCH REPORT

International application No.
PCT/US99/22948

A. CLASSIFICATION OF SUBJECT MATTER

IPC(6) : G06F 13/00, 13/38

US CL : 709/206, 202, 200, 207; 379/34

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 709/206, 202, 200, 207; 379/34

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched
IEEE, MICROSOFT'S COMPUTER DICTIONARY

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

DIALOG, WEST, EAST

search terms: e-mail, lan, internet, gateway, load balance, initiate, routing, advertising, identify

C. DOCUMENTS CONSIDERED TO BE RELEVANT

| Category* | Citation of document, with indication, where appropriate, of the relevant passages | Relevant to claim No. |
|-----------|---|-----------------------|
| Y | US 5,790,789 A (SUAREZ) 04 August 1998, figs.1 and 5, abstract, col.6 lines 13-41; col.9, line 40 to col.10, line 58; col.11 lines 15-43. | 1-8 |
| Y | US 5,632,018 A (OTORRI) 20 May 1997, abstract, fig.2, col.3, lines 3-38; col.4, lines 5-59. | 1-6, 8 |
| Y | US 5,765,033 A (MILOSLAVSKY) 09 June 1998, col.2, line 57 to col.3 line 53; col.4, lines 20-59. | 7 |

☐

Further documents are listed in the continuation of Box C.

☐

See patent family annex.

| | |
|---|--|
| * Special categories of cited documents: | *T* later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention |
| *A* document defining the general state of the art which is not considered to be of particular relevance | *X* document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone |
| *E* earlier document published on or after the international filing date | *Y* document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art |
| *L* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified) | *Z* document member of the same patent family |
| *O* document referring to an oral disclosure, use, exhibition or other means | |
| *P* document published prior to the international filing date but later than the priority date claimed | |

Date of the actual completion of the international search

15 DECEMBER 1999

Date of mailing of the international search report

19 JAN 2000

Name and mailing address of the ISA/US
Commissioner of Patents and Trademarks
Box PCT
Washington, D.C. 20231

Facsimile No. (703) 305-3230

Authorized officer
AHMAD MATAR

Telephone No. (703) 305-4731

PCT REQUEST

604.12-PCT

Original (for SUBMISSION) - printed on 12.10.1999 03:55:26 PM

| | | |
|----------------|--|--|
| 0 | For receiving Office use only | |
| 0-1 | International Application No. | |
| 0-2 | International Filing Date | |
| 0-3 | Name of receiving Office and "PCT International Application" | |
| 0-4 | Form - PCT/RO/101 PCT Request | |
| 0-4-1 | Prepared using | PCT-EASY Version 2.84 (updated 01.07.1999) |
| 0-5 | Petition The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty | |
| 0-6 | Receiving Office (specified by the applicant) | United States Patent and Trademark Office (USPTO) (RO/US) |
| 0-7 | Applicant's or agent's file reference | 604.12-PCT |
| I | Title of invention | LOAD BALANCING VIA MESSAGE SOURCE SELECTION |
| II | Applicant | |
| II-1 | This person is: | applicant only |
| II-2 | Applicant for | all designated States except US |
| II-4 | Name | ECOMMERCIAL.COM, INC. |
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| II-7 | State of residence | US |
| II-8 | Telephone No. | 949-916-8705 |
| II-9 | Facsimile No. | 949-916-8713 |
| III-1 | Applicant and/or inventor | |
| III-1-1 | This person is: | applicant and inventor |
| III-1-2 | Applicant for | US only |
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| III-1-6 | State of nationality | US |
| III-1-7 | State of residence | US |

PCT REQUEST

604.12-PCT

Original (for SUBMISSION) - printed on 12.10.1999 03:55:26 PM

| | | |
|---------|--|--|
| III-2 | Applicant and/or Inventor | |
| III-2-1 | This person is: | applicant and inventor |
| III-2-2 | Applicant for | US only |
| III-2-4 | Name (LAST, First) | ROBERTS, Ed |
| III-2-5 | Address: | eCommercial.com, Inc. 95 Enterprise Suite 360 Aliso Viejo, CA 92656 United States of America |
| III-2-6 | State of nationality | US |
| III-2-7 | State of residence | US |
| IV-1 | Agent or common representative; or address for correspondence The person identified below is hereby/has been appointed to act on behalf of the applicant(s) before the competent International Authorities as: | agent |
| IV-1-1 | Name (LAST, First) | FISH, Robert |
| IV-1-2 | Address: | Crockett & Fish 1440 N. Harbor Blvd. Suite 706 Fullerton, CA 92835 United States of America |
| IV-1-3 | Telephone No. | 714-449-2337 |
| IV-1-4 | Facsimile No. | 714-449-2339 |
| IV-1-5 | e-mail | rdfish@crockett-fish.com |
| V | Designation of States | |
| V-1 | Regional Patent (other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned) | AP: GH GM KE LS MW SD SL SZ UG ZW and any other State which is a Contracting State of the Harare Protocol and of the PCT EA: AM AZ BY KG KZ MD RU TJ TM and any other State which is a Contracting State of the Eurasian Patent Convention and of the PCT EP: AT BE CH&LI CY DE DK ES FI FR GB GR IE IT LU MC NL PT SE and any other State which is a Contracting State of the European Patent Convention and of the PCT OA: BF BJ CF CG CI CM GA GN GW ML MR NE SN TD TG and any other State which is a member State of OAPI and a Contracting State of the PCT |

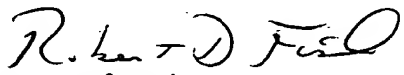
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| | | | |
|---------|--|--|-----------------------------|
| V-2 | National Patent (other kinds of protection or treatment, if any, are specified between parentheses after the designation(s) concerned) | AE AL AM AT (patent and utility model) AU AZ BA BB BG BR BY CA CH&LI CN CR CU CZ (patent and utility model) DE (patent and utility model) DK (patent and utility model) DM EE (patent and utility model) ES FI (patent and utility model) GB GD GE GH GM HR HU ID IL IN IS JP KE KG KP KR KZ LC LK LR LS LT LU LV MD MG MK MN MW MX NO NZ PL PT RO RU SD SE SG SI SK (patent and utility model) SL TJ TM TR TT TZ UA UG US UZ VN YU ZA ZW | |
| V-5 | Precautionary Designation Statement In addition to the designations made under items V-1, V-2 and V-3, the applicant also makes under Rule 4.9(b) all designations which would be permitted under the PCT except any designation(s) of the State(s) indicated under item V-6 below. The applicant declares that those additional designations are subject to confirmation and that any designation which is not confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit. | | |
| V-6 | Exclusion(s) from precautionary designations | NONE | |
| VI | Priority claim | NONE | |
| VII-1 | International Searching Authority Chosen | United States Patent and Trademark Office (USPTO) (ISA/US) | |
| VIII | Check list | number of sheets | electronic file(s) attached |
| VIII-1 | Request | 4 | - |
| VIII-2 | Description | 6 | - |
| VIII-3 | Claims | 2 | - |
| VIII-4 | Abstract | 1 | abstract.txt |
| VIII-5 | Drawings | 2 | - |
| VIII-7 | TOTAL | 15 | |
| VIII-8 | Accompanying items | paper document(s) attached | electronic file(s) attached |
| VIII-8 | Fee calculation sheet | ✓ | - |
| VIII-16 | PCT-EASY diskette | - | diskette |
| VIII-17 | Other (specified): | Return Receipt Postcard | - |
| VIII-18 | Figure of the drawings which should accompany the abstract | | |
| VIII-19 | Language of filing of the international application | English | |

PCT REQUEST

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| | | |
|--------|---------------------------------|--|
| IX-1 | Signature of applicant or agent |  |
| IX-1-1 | Name (LAST, First) | FISH, Robert |

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| | | |
|--------|---|--------|
| 10-1 | Date of actual receipt of the purported international application | |
| 10-2 | Drawings: | |
| 10-2-1 | Received | |
| 10-2-2 | Not received | |
| 10-3 | Corrected date of actual receipt due to later but timely received papers or drawings completing the purported international application | |
| 10-4 | Date of timely receipt of the required corrections under PCT Article 11(2) | |
| 10-5 | International Searching Authority | ISA/US |
| 10-6 | Transmittal of search copy delayed until search fee is paid | |

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| | | |
|------|--|--|
| 11-1 | Date of receipt of the record copy by the International Bureau | |
|------|--|--|

PCT (ANNEX - FEE CALCULATION SHEET)

604.12-PCT

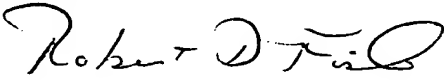
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(This sheet is not part of and does not count as a sheet of the international application)

| | | | |
|----------------|--|--|----------------------------|
| 0 | For receiving Office use only | | |
| 0-1 | International Application No. | | |
| 0-2 | Date stamp of the receiving Office | | |
| 0-4 | Form - PCT/RO/101 (Annex) | | |
| 0-4-1 | PCT Fee Calculation Sheet Prepared using | PCT-EASY Version 2.84 (updated 01.07.1999) | |
| 0-9 | Applicant's or agent's file reference | 604.12-PCT | |
| 2 | Applicant | ECOMMERCIAL.COM, INC., et al. | |
| 12 | Calculation of prescribed fees | fee amount/multiplier | total amounts (USD) |
| 12-1 | Transmittal fee T | ⇒ | 240 |
| 12-2 | Search fee S | ⇒ | 700 |
| 12-3 | International fee Basic fee (first 30 sheets) b1 | 455 | |
| 12-4 | Remaining sheets | 0 | |
| 12-5 | Additional amount (X) | 10 | |
| 12-6 | Total additional amount b2 | 0 | |
| 12-7 | b1 + b2 = B | 455 | |
| 12-8 | Designation fees Number of designations contained in international application | 82 | |
| 12-9 | Number of designation fees payable (maximum 10) | 10 | |
| 12-10 | Amount of designation fee (X) | 105 | |
| 12-11 | Total designation fees D | 1,050 | |
| 12-12 | PCT-EASY fee reduction R | -140 | |
| 12-13 | Total International fee (B+D-R) | ⇒ | 1,365 |
| 12-17 | TOTAL FEES PAYABLE (T+S+I+P) | ⇒ | 2,305 |
| 12-19 | Mode of payment | cheque | |
| 12-20 | Deposit account instructions The receiving Office: | United States Patent and Trademark Office (USPTO) (RO/US) | |
| 12-20-2 | is hereby authorized to charge any deficiency or credit any over-payment in the total fees indicated above to my deposit account | ✓ <i>Robert D. Field</i> | |
| 12-20-3 | is hereby authorized to charge the fee for preparation and transmittal of the priority document to the International Bureau of WIPO to my deposit account | ✓ <i>Robert D. Field</i> | |
| 12-21 | Deposit account No. | 500341 | |
| 12-22 | Date | 12 October 1999 (12.10.1999) | |

PCT (ANNEX - FEE CALCULATION SHEET)

Original (for SUBMISSION) - printed on 12.10.1999 03:55:26 PM

| | | |
|-------|--------------------|--|
| 12-23 | Name and signature | FISH, Robert  |
|-------|--------------------|--|

VALIDATION LOG AND REMARKS

| | | |
|--------|---------------------------------|---|
| 13-2-4 | Validation messages Priority | Green? No priority of an earlier application has been claimed. Please verify |
| 13-2-6 | Validation messages Contents | Yellow! The power of attorney or a copy of the general power of attorney will need to be furnished unless all applicants sign the request form. |
| | | Green? Figure of the drawings which should accompany the abstract not specified. Please verify. |
| 13-2-7 | Validation messages Fees | Green? Please confirm that fee schedule utilized is the latest available |

**IN THE UNITED STATES INTERNATIONAL PRELIMINARY
EXAMINATION AUTHORITY (IPEA/US)**

| International Application Number | International Filing Date | International Earliest Priority Date |
|---|----------------------------------|---|
| PCT/US99/22948 | 12 October 1999 | None |

Title of Invention: Load Balancing Via Message Source Selection
Applicant: eCommercial.com, Inc.

International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20
Switzerland

**LETTER FOR PCT ARTICLE 19 AMENDMENT OF CLAIMS
(PCT SECTION 205)**

1. Applicant herewith submits replacement sheets(s) number(ed) 7 - 8 to replace sheet(s) number(ed) 7 - 8, originally filed for this application.
2. In respect of each claim appearing in the international application based on the replacement sheets submitted herewith, and in accordance with PCT Section 205, the following claim(s) is/are:
 - (i) unchanged: claim(s): 2 - 7
 - (ii) cancelled: claim(s): none
 - (iii) new: claim(s): none
 - (iv) replacement of one or more claims as filed, as follows: claim 1 is amended,
and claim 8 is amended.
 - (v) the result of the division of one or more claims as filed, as follows: none

Dear Sir:

This letter responds to the Search Report dated 19 January 2000.

Substitute Claim Sheets

Please substitute the attached substitute claim sheets numbered 7 & 8 for the previously filed claim sheets numbered 7 & 8. Claims 1 and 8 are amended as follows:

1. In a client-server architecture, a [A] method for load balancing outgoing e-mail via e-mail source selection comprising:
providing a mail network comprising an initiator and at least two alternative gateways distinct from the initiator;
the initiator identifying a mail message recipient and identifying advertising material to be mailed to the recipient, automatically selecting a gateway from the at least two gateways, and requesting the selected gateway to automatically generate an e-mail message which includes the identified advertising material and to send the generated message to the recipient; and
the selected gateway generating and sending the requested message.
8. In a client-server architecture, a [A] method for load balancing outgoing e-mail via e-mail source selection comprising:
providing a mail network comprising an initiator and at least two alternative gateways distinct from the initiator, each gateway comprising a set of multimedia files for inclusion in generated mail messages, the set on any one gateway including the same files as the sets on all the other gateways;
the initiator comprising a list of the multi-media files included in the sets on the gateways; comprising a database of message recipients which includes data on each recipient including the identified recipient; identifying a mail message recipient and using the data for the identified recipient in identifying advertising material to be mailed to the recipient; [,]
selecting a gateway from the at least two gateways wherein the selection of the gateway is at least partially based on attempting to minimize the time between when the gateway is requested to generate the message and when the recipient receives the message, and
requesting the selected gateway to generate an e-mail message which includes the identified advertising material and to send the generated message to the recipient;
the selected gateway generating and sending the requested message.

Cited References

The Office indicated that claims 1-8 are obvious over Suarez. (US 5790789), claims 1-6 and 8 are obvious over Otorii (US 5632018), and claim 7 is obvious over Miloslavsky (US 5765033). The applicant disagrees with that assessment for the reasons set forth immediately below, especially as the claims have been amended herein.

Suarez

Suarez teaches a distributed computing system in which agents control services by manipulating messages to the services. (spec., col. 6, lines 12-41). The architecture is particularly designed so that some servers can direct other servers to accomplish particular tasks. In that manner the Suarez system is considerably different from the client-server and peer to peer architectures, and is distinguished from those systems throughout the specification.

The presently claimed system is expressly contemplated to operate on a client-server architecture (eCommercial spec., page 3, lines 21 - 24. Granted, the type of architecture was not expressly claimed in the originally filed claims, but now that it is claimed, Suarez is removed as an obviousness reference because it teaches against a limitation of independent claims 1 and 8, (and claims 2-7 by virtue of their dependence on claim 1).

Suarez also has little or nothing to say about the various limitations of the dependent claims. For example, Suarez fails to teach, suggest or motivate one to select gateways to minimize overall delivery time (claim 6) or round trip time (claim 7).

Otorii

Otorii teaches an electronic mailing system in which recipients of a broadcast can readily send their responses not just to the originator of the broadcast, but to all recipients of the broadcast. The system is accomplished by passing along a list of all broadcast recipients to each of the recipients.

The Otorii system is entirely different from that recited in the pending claims. For one thing, in Otorii all of the messages are created by an originator, and then routed by a server. The original message of Otorii Figure 2, for example, is created by Message Sender (Terminal Unit 1), and routed by the Broadcasting Unit 1. Various responses are created by users at Terminal Units 2, 3 . . . n, and then routed by Response Receiving Unit 2 and later, Response Receiving Unit 2. In contrast, the pending claims recite that an initiator selects a gateway to both create and send a message. It would be as if the Terminal Unit 2 of Otorii's Figure 2 was to instruct the Response Receiving Unit 2 to create a response to the broadcast message - and that is simply not contemplated by Otorii.

Moreover, as amended herein the preamble of claim 1 (and claims 2-8 by virtue of their dependence on claim 1) recites "a method for load balancing outgoing e-mail". Otorii says nothing at all about out-going load balancing, instead focusing on the convenience of responders to broadcast e-mails in broadcasting their own responses to others on the broadcast list.

Otorii does no better against the various dependent claims. Claim 2 recites that each of the gateways (i.e. the systems that actually route the messages) includes multimedia files for including in generated e-mail messages. That teaching is entirely inconsistent with Otorii, who contemplates that the entire mail system 300 is nothing more than a fancy router. At no point does any aspect of Otorii's mail system ever add content to the messages, let alone multi-media content.

Claim 3 recites that the initiator includes a list of multi-media files and a database that is used to determine which of the multi-media files gets sent to which recipients. In effect the claim is requiring automatic generation of e-mail content, which again is not taught, suggested or motivated by Otorii. But the distinction is even greater because in the claims it is the initiator that is automatically determining content for the e-mail messages, but it is a [distinct] gateway that that is actually assembling the messages, not the initiator.

Claim 6 recites that the selection of gateway is at least partially based on attempting to minimize the time between when the gateway is requested to generate the message and when the recipient receives the message. These limitations are not taught, suggested or motivated by Otorii for several reasons. First of all, there is no selection at all of alternative gateways in Otorii. Second, even if there were such selection, there is no indication that the selection criteria would be based upon fastest service to the recipient. The Otorii system depends upon passing a relatively large list of recipients from a Responder to a Response Receiving Unit, and also obtaining permission from the Broadcasting Unit. All of that is made considerably less efficient if the Responder can send his response to any of several possible Response Receiving Units.

Claim 8 has limitations from several of the claim 1 dependencies, and therefore the arguments are essentially the same.

Miloslavsky

Miloslavsky is cited only as being relevant to claim 7, which recites selecting a gateway based upon round trip time between the gateway and the recipient. This citation is not understood.

Miloslavsky teaches routing of e-mails within a LAN according to the content of the e-mails, and availability of the recipient. Thus, an e-mail requiring technical assistance would be routed to a technician rather than a salesman, and to a relatively available technician over a relatively busy technician (col. 3., lines 15-53). In other words, Miloslavsky is mostly interested in getting e-mails answered by the right person, in a timely manner..

But the timeliness of answering an e-mail in a Miloslavsky system has nothing to do with RTT. The timeliness Miloslavsky is contemplating is measured in minutes or hours, or even days. (See spec., col. 4, lines 38-43). In contrast pending claim 7 routes e-mails according to the round trip time which is measured in milliseconds. Thus, there is no teaching, suggestion, or motivation set forth in Miloslavsky that would lead one to select alternative servers at all, let alone servers according to RTT.

Conclusion


None of the references anticipate or render the presently filed claims obvious. Suarez is eliminated as a reference by amendments herein. Otorii's system is entirely different from that recited in the pending claims, and it fails to contemplate an initiator selecting a single gateway from among alternative gateways to both create and send a message. Miloslavsky adds little or nothing relative to the present claims, having no teaching, suggestion or motivation even with respect to selecting from among alternative gateways according to round trip time.

Request for Conference

The present application is of the greatest personal importance to the applicant. If after considering the above arguments and the claim modifications the Authorized Officer still considers the claims to be unpatentable over the prior art, the undersigned would appreciate the opportunity to discuss this matter directly. This could be accomplished by telephone, or if the Authorized Officer finds it appropriate, the undersigned would be pleased to come to Washington to discuss the same, and perhaps develop claims that would be considered allowable.

Respectfully submitted,
Fish & Associates, LLP

Dated: 6/3/06

By 
Robert D. Fish
Reg. No. 33,880

Attorneys for Applicant(s)
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Fullerton, CA 92385
Tel.: (714) 449-2337
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CLAIMS

1. In a client-server architecture, a method for load balancing outgoing e-mail via e-mail source selection comprising:
providing a mail network comprising an initiator and at least two alternative gateways distinct from the initiator;
the initiator identifying a mail message recipient and identifying advertising material to be mailed to the recipient, automatically selecting a gateway from the at least two gateways, and requesting the selected gateway to automatically generate an e-mail message which includes the identified advertising material and to send the generated message to the recipient; and
the selected gateway generating and sending the requested message.
2. The method of claim 1 wherein each gateway comprises a set of multimedia files for inclusion in generated mail messages, the set on any one gateway including the same files as the sets on all the other gateways.
3. The method of claim 2 wherein the initiator comprises a list of the multi-media files included in the sets on the gateways, and a database of message recipients includes data on each recipient including the identified recipient, the data for the identified recipient being used in identifying the advertising material to be mailed to the identified recipient.
4. The method of claim 1 wherein the mail network is a WAN.
5. The method of claim 1 wherein the gateways are coupled to the INTERNET such that the generated message is sent to the recipient via the INTERNET.
6. The method of claim 1 wherein the selection of the gateway is at least partially based on attempting to minimize the time between when the gateway is requested to generate the message and when the recipient receives the message.
7. The method of claim 6 wherein each gateway can determine the round trip time between itself and the recipient's machine and the selection of a gateway is at least partially based on the determined RTT.
8. In a client-server architecture, a method for load balancing outgoing e-mail via e-mail source selection comprising:

providing a mail network comprising an initiator and at least two alternative gateways distinct from the initiator, each gateway comprising a set of multimedia files for inclusion in generated mail messages, the set on any one gateway including the same files as the sets on all the other gateways; the initiator comprising a list of the multi-media files included in the sets on the gateways; comprising a database of message recipients which includes data on each recipient including the identified recipient; identifying a mail message recipient and using the data for the identified recipient in identifying advertising material to be mailed to the recipient; selecting a gateway from the at least two gateways wherein the selection of the gateway is at least partially based on attempting to minimize the time between when the gateway is requested to generate the message and when the recipient receives the message, and requesting the selected gateway to generate an e-mail message which includes the identified advertising material and to send the generated message to the recipient; the selected gateway generating and sending the requested message.